

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____	X	
THE NEW YORK TIMES COMPANY,	:	
	:	
Plaintiff,	:	
	:	
- against -	:	<u>COMPLAINT</u>
	:	No. 1:15-CV-07366
FEDERAL BUREAU OF INVESTIGATION,	:	
	:	
Defendant.	:	
_____	X	

Plaintiff THE NEW YORK TIMES COMPANY, by its undersigned attorney, alleges for its Complaint:

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), to order the production of agency records from the Federal Bureau of Investigation (“FBI”) in response to a request properly made by Plaintiff The New York Times Company.

PARTIES

2. Plaintiff The New York Times Company publishes The New York Times newspaper. The New York Times Company is headquartered in this judicial district at 620 Eighth Avenue, New York, New York.

3. Defendant the FBI, a component of the Department of Justice, is an agency of the federal government that has possession and control of the records that Plaintiff seeks.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

5. Venue is premised on the place of business of Plaintiff and is proper in this district under 5 U.S.C. § 552(a)(4)(B).

6. Plaintiff has exhausted all administrative remedies available in regard to the request at issue. The FBI denied Plaintiff's administrative appeal, and therefore Plaintiff is entitled to seek judicial review of that denial pursuant to 5 U.S.C. § 552(a)(4)(B).

FACTS

7. On March 18, 2015, The New York Times submitted a FOIA request (the "Request") to the FBI seeking all FBI files related to the investigation of Hiram Martinez Jr. between the years 1988 and 1993.

8. On June 3, 2015, the FBI denied the Request, indicating that it had closed the file.

9. On June 9, 2015, The New York Times appealed that denial to the Office of Information Policy ("OIP") at the Department of Justice, which is charged with deciding FOIA appeals for the FBI.

10. On August 7, 2015, OIP denied that appeal, noting that it had consulted with the FBI and concluded that FOIA Exemptions (6) and (7)(C), which pertain to personal privacy, provide the FBI with a proper basis to deny the Request.

COUNT

11. Plaintiff repeats, realleges, and reincorporates the allegations in the foregoing paragraphs as though fully set forth herein.

12. The FBI is an agency subject to FOIA and must therefore release in response to a FOIA request any disclosable records in its possession at the time of the request and provide a lawful reason for withholding any other materials as to which it is claiming an exemption.

13. Under 5 U.S.C. § 552(a)(4)(B), if an agency on administrative appeal upholds the denial of a request for records under FOIA, the requestor may seek judicial review of the agency's decision.

14. The FBI asserted two personal privacy exemptions under FOIA as its basis for refusing to produce the documents specified in the Request.

15. Mr. Martinez was the subject of a federal prosecution and conviction.

16. Because of the public nature of Mr. Martinez's prosecution and conviction, and the legitimate public interest in such a criminal case, the FOIA personal privacy exemptions do not apply to the Request.

17. The FBI's failure to provide responsive documents violates FOIA.

18. Accordingly, Plaintiff is entitled to an order compelling the FBI to undertake an adequate search of its records and produce the documents sought by the Request.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

a. Declare that the documents sought by the Request, as described in the foregoing paragraphs, are public under 5 U.S.C. § 552 and must be disclosed;

- b. Order the FBI to undertake an adequate search for the requested records and provide those records to Plaintiff within 20 business days of the Court's order;
- c. Award Plaintiff the costs of this proceeding, including reasonable attorney's fees, as expressly permitted by FOIA; and
- d. Grant Plaintiff such other and further relief as this Court deems just and proper.

Dated: New York, New York
September 17, 2015

_____/s/_____
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